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**VIA CERTIFIED MAIL - -  
RETURN RECEIPT REQUESTED**

April 10, 2014

Jim Deak, General Manager  
Warren Wynant, Harbormaster  
Oxbow Marina  
100 Oxbow Marina Drive  
Isleton, CA 95461

**Re: Second Supplemental Notice of Violations and Intent to File Suit under  
the Federal Water Pollution Control Act ("Clean Water Act")**

Dear Owner, Operator, and Site Manager:

### **NOTICE**

This Second Supplemental Notice of Violations is provided on behalf of California River Watch, ("River Watch") identifying further alleged violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at the Oxbow Marina facility located at 100 Oxbow Marina Drive in Isleton, California. Notice is being sent to you as the responsible owners, operators and/or managers of this facility ("the Discharger").

This Supplemental Notice provides statutory notification of continuing and ongoing violations of "an effluent standard or limitation," permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by the illegal discharges by the Discharger of pollutants from a point source to waters of the United States without a National Pollution Discharge Elimination System ("NPDES") permit. This Notice also addresses the ongoing violations by the Discharger of the substantive and procedural requirements of CWA § 402(p) and NPDES General Permit No. CAS000001, State Water

Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Permit"). The CWA prohibits storm water discharges without a permit pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

CWA § 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), a citizen must give notice of the intent to sue. Notice must be given to the alleged violator, the Environmental Protection Agency ("EPA"), and the State in which the violations occur. River Watch properly provided Oxbow Marina with a Notice of Violations and Intent to File Suit on August 14, 2013 and a Supplemental Notice of Violation and Intent to File Suit on October 25, 2013, in advance of filing its Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation on January 8, 2014, as amended on March 13, 2014 (*California River Watch v. Oxbow Marina et al.*, U.S. Dist. Ct. (E.D.), 2:14-cv-00045-KJM-CKD).

As stated in prior Notices and the filed Complaint, the CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a NPDES permit pursuant to the CWA to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition. Without a NPDES permit, **all surface and subsurface** discharges from a point source to waters of the United States are illegal. River Watch provides this Second Supplemental Notice of Violations alleging, in addition to the violations of the General Permit addressed in its prior Notices of Violations, that the Discharger has no NPDES permit allowing the current and on-going discharge of pollutants from its former underground storage tanks ("USTs") to waters of the United States. As a result, the Discharger has failed and is failing to comply with the Act as required by CWA § 301(a), 33 U.S.C. § 1311(a); and CWA §§ 402(a), 402(b), and 402(p), 33 U.S.C. §§ 1342(a), (b), and (p). *See also* 40 C.F.R. § 122.26.

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standards, limitations, or orders alleged to have been violated.*

Based on information thus far received, River Watch believes there are two sources of pollutants being discharged from the Oxbow Marina site:

- a. Marina activities and operation – Discharges of petroleum hydrocarbons, oil and



grease, anti-freeze, solvents, paints, toxic metals (including copper, zinc, aluminum, iron, and lead), soaps, sediment, biodegradable organic matter, sanitary waste, bacteria, grey water and organics.

River Watch contends the Discharger has no individual NPDES permit for these discharges, and has failed and is failing to apply for coverage and comply with the requirements of the General Permit. These discharges are in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to waters of the United States, in this instance Georgiana Slough, pursuant to the CWA. As a result, the Discharger has failed and is failing to comply with the Act as required by CWA § 301(a), 33 U.S.C. § 1311(a); CWA §§ 402(a) and 402(b), 33 U.S.C. §§ 1342(a) and (b); and 33 U.S.C. § 1365(f).

- b. Underground Storage Tanks - Discharges of TPHg, TPHd, benzene, toluene, ethylbenzene, xylenes, MTBE, and TBA.

River Watch contends that the Discharger has no individual NPDES permit for the discharge of these pollutants from Oxbow Marina's former USTs. These point source discharges of pollutants (residual solid waste from the former USTs) to ground water, which is hydrologically connected to Georgiana Slough, are in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit. As a result, the Discharger has failed and is failing to comply with the Act as required by CWA § 301(a), 33 U.S.C. § 1311(a); CWA §§ 402(a), 402(b), and 402(p), 33 U.S.C. §§ 1342(a), (b), and (p); and CWA § 505(f), 33 U.S.C. § 1365(f). *See also* 40 C.F.R. § 122.26.

2. *The activities alleged to constitute CWA violations.*

- a. Marina activities and operation

Operations at the Discharger's facility (classified in the General Permit under "Water Transportation Facilities That Have Vehicle (Vessel) & Equipment Maintenance Shops And/Or Equipment Cleaning Operations" under SIC 4493<sup>1</sup> include, but are not limited to: "boat berths," "Nordic Marine Mechanic Services," "gas and diesel fuel dock," "free pumpout stations," "general store and snack bar," and "Delta Yacht Brokerage" (<http://www.oxbowmarina.com>; October 21, 2013). Due to spills, over-topping, and general use, petroleum hydrocarbons are being discharged from the Oxbow Marina gas and diesel fuel dock to Georgiana Slough. Further, at the time the Complaint was filed,

<sup>1</sup> SIC 4493 "Marinas" are "[e]stablishments primarily engaged in operating marinas. These establishments rent boat slips and store boats, and generally perform a range of other services including cleaning and incidental boat repair. They frequently sell food, fuel, and fishing supplies, and may sell boats."



the Discharger advertised and promoted the on-site services of independent contractors allowed to conduct boat repair and maintenance work for Oxbow marina lessees in the Oxbow Marina boat slips over which the Discharger maintains operation and control. The EPA has specifically asserted that "water transportation facilities that perform vessel and equipment fluid changes, mechanical repairs, parts cleaning, sanding, blasting, welding, refinishing, painting, fueling, vessel and vehicle exterior washdown" that are covered under SIC 4493, "require coverage under an industrial stormwater permit." (Page 1, "Industrial Stormwater Fact Sheet Series, Sector Q: Water Transportation Facilities" (EPA Office of Water, EPA-833-F-06-032, December 2006; [http://www.epa.gov/npdes/pubs/sector\\_q\\_watertransportation.pdf](http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf); October 21, 2013)).

In sum, to properly regulate the activities conducted at the Oxbow Marina facility in order to control the storm and non-storm water discharge of pollutants into the navigable water of Georgiana Slough, the State Water Resources Control Board requires marinas to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or obtain exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch does not reveal the Discharger having obtained any required permit coverage or exemption from coverage under the CWA for the Oxbow Marina facility. In addition, marinas are required to obtain a separate individual NPDES permit for discharges of ballast water, sanitary wastes, and pressure wash water, originating from vessels. These discharges are not covered under the General Permit.

b. Four Underground Storage Tanks

Gasoline was stored at the Oxbow Marina facility in two (2) USTs with capacities of 6,000 gallons and one (1) UST with a capacity of 2,000 gallons; and diesel was stored in one (1) UST with a capacity of 6,000 gallons. On April 14, 1999, following a determination that the USTs were leaking, the USTs were removed from the Oxbow Marina site. State Water Resource Control Board reports provided on "Geotracker" cite analytical results of both soil and groundwater samples from the contaminant plume indicating that groundwater, which is between 1.06 feet and 8.69 feet "below ground surface" at the location of the discharge, was impacted by petroleum hydrocarbons. Soil borings have been taken, and monitoring wells and groundwater extraction wells, as well as piezometers have been installed. River Watch believes that groundwater monitoring continues. Records currently available to River Watch on "Geotracker," however, do not, among other deficiencies reveal whether a "sensitive receptor survey" has been conducted, or provide monitoring data on the impact of the releases from the four (4) USTs discharged to the nearby surface waters of Georgiana Slough. River Watch believes the pollutants released from the four (4) USTs to groundwater at the Oxbow Marina site have discharged and are discharging to the hydrologically connected surface



waters of Georgiana Slough, a water of the United States, identified by "Geotracker" maps as being located less than fifty (50) feet from site of the four (4) leaking USTs. These violations are therefore continuing in nature.

3. *The discharger responsible for the alleged violation*

The person or persons responsible for the alleged violations referred to in this Second Supplemental Notice is Oxbow Marina, including its owners and managers, identified herein as the Discharger.

4. *The location of the alleged violations*

The locations of the point sources from which the pollutants identified in this Second Supplemental Notice are discharged in violation of the CWA is the permanent address of the Oxbow Marina at 100 Oxbow Marina Drive, in Isleton, California, including the adjoining waters of the Georgiana Slough – a water of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.*

The range of dates covered by this Second Supplemental Notice is from April 10, 2009 to April 10, 2014. River Watch will from time to time further update this Second Supplemental Notice to include all violations which occur after the range of dates covered herein. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main Street, #817, Sebastopol, CA 95472 – a nonprofit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools, and tributaries.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

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### **REMEDIAL MEASURES REQUESTED**

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts of its non-compliance upon public health and the environment surrounding the Oxbow Marina facility:

1. Prohibition of the discharge of TPHg, TPHd, benzene, toluene, ethylbenzene, xylenes, MTBE, and TBA from the four former USTs at the Oxbow Marina site into Georgiana Slough.
2. Prohibition of the discharges of all pollutants identified in the General Permit applicable to marina facilities, including aluminum, iron, lead, and zinc identified in Table D, petroleum hydrocarbons, oil and grease, anti-freeze, solvents, paints, soaps, and sediment, from the Oxbow Marina site.
3. Compliance with the terms and conditions of the General Permit, and Best Management Practices detailed in the EPA's "Industrial Stormwater Fact Sheet Series, Sector Q: Water Transportation Facilities" (EPA Office of Water, EPA-833-F-06-032, December 2006; which can be found at the following website: [http://www.epa.gov/npdes/pubs/sector\\_q\\_watertransportation.pdf](http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf)).
4. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit, and the requirements imposed in any separate NPDES permit.
5. Sampling of storm water at least four (4) times per year over each of the next five (5) years: at "first flush"; the first significant rain after "first flush"; the first significant rain after April 1; and the second significant rain after April 1.
6. Preparation of an updated SWPPP including a monitoring program, with a copy provided to River Watch.

### **CONCLUSION**

CWA § 505(a)(1) and § 505(f) provide for citizen enforcement actions against any

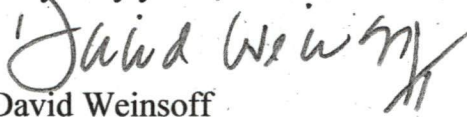


"person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. § 1365(a)(1), § 1365(f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to amend the current lawsuit (*California River Watch v. Oxbow Marina et al.*, US Dist. Ct. (E.D.), 2:14-cv-00045-KJM-CKD) to reflect the violations of the CWA identified and described in this Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the amendment of the current lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



David Weinsoff

DW:lhbm

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